

REMARKS

This is in response to the Office Action mailed on June 15, 2004. The Office Action states that claims 20-36 are pending in the application. Applicant notes that claims 20-28 and 31-36 are pending as claims 29 and 30 have previously been cancelled. Applicant believes this to be a typographical error. The Examiner rejected claims 20-22, 24-27 and 31-36 and objected to claims 23 and 28. With this amendment, claims 20 and 31 are amended and the remaining claims are unchanged in the application.

On page 2 of the Office Action, the Examiner rejected claims 20, 26, 27, and 31 under 35 U.S.C. §101 stating that the claimed invention is directed to non-statutory subject matter. Applicant notes that the Examiner did not give specific reasons for the rejections. The Examiner instead cited claims 15 and 16 which have previously been cancelled. Notwithstanding, Applicant respectfully submits that claims 20, 26, 27, and 31 are directed to functional descriptive material. "Functional descriptive material consists of data structures and computer programs which impart functionality when employed as a computer component." MPEP § 2106.

Applicant notes that claims 20, 26, 27 and 31 are all claimed as embodied on computer readable media. MPEP § 2106 IV, B,1,a. Further, the data structures of claims 20 and 31 contain an expiration date portion indicative of the expiration of a specific message service. This directly controls the functionality of a computer on which it is implemented. Specifically, the expiration date causes the computer to discard any messages received after the expiration date. Further, the data structure contains address information which also directly affects the functionality of the computer. Specifically, the address specifies the addresses over which the mobile device receives messages. Claims 26 and 27 further contain encryption key and algorithm information used to decrypt received messages.

Applicant respectfully submits that the data structures claimed in independent claims 20 and 31, and also in dependent claims 26 and 27, which depend on claim 20, impart functionality when employed in the context of a mobile device.

The Examiner also rejected claims 20-22, 24-27 and 31-36 based on prior art. Of those claims, claims 20 and 31 are independent claims. The Examiner rejected claim 20 under 35 U.S.C. §103(a) as being unpatentable over Parkinson et al. (U.S. Patent No. 6,088,457) in view of Barrett et al. (U.S. Patent No. 5,222,137). On page 5 of the Office Action, the Examiner rejected independent claim 31 under 35 U.S.C. §103(a) in view of the same references. Applicant has amended independent claims 20 and 31 and the remaining claims are unchanged.

Applicant respectfully submits that the present invention is fundamentally different than the cited references. The method disclosed in Parkinson is an "over-the-air-programming" (OTAP) technique in which programming messages are sent to a communication device in order to change operational parameters. A programming time period is enabled during which the communication device is responsive to programming messages (col. 2, ln. 32-43). Simply put, Parkinson teaches a method of programming a mobile device over-the-air in which an enable message is sent causing the mobile device to be responsive to programming messages for a pre-determined "timer" period. After the timer period times out, all subsequent programming messages are discarded. For example, if a mobile device user wants to subscribe to "message service A" (i.e. the local news service), an enable message is sent to the user's mobile device, enabling it to receive "programming" messages. A programming message is then sent within the timer period. The programming messages configure the mobile device to receive "content" messages from "message service A". To unsubscribe to "message service A", the method must be performed again as another programming message

must be sent to the mobile device to configure it so that it is unable to receiving "content" messages from "message service A". Applicant respectfully submits that the timer in Parkinson has no effect on the manner and duration for which "content" messages are received as it instead teaches a method for sending and receiving programming messages. The timer simply has nothing to do with whether a subscription has lapsed.

In this regard, the present invention is fundamentally distinguishable. The present invention is a data structure on a computer readable medium of a mobile device. The data structure has "an expiration date portion indicative of a subscription expiration date... wherein... content messages corresponding to the subscribed service received... after the expiration date, are discarded...". For example, if a user wants to subscribe to a specific service provider, a sports network for example, for one year, a programming message is sent to program the user's mobile device. The mobile device is programmed with an expiration date indicative of one year from the date of subscription and corresponding to the address over which content messages are received from the specified service provider (the sports network in this example). As a result, the user would receive content messages sent from the service provider for a period of one year. After the one year period, content messages from the service provider would be discarded.

Further, the method provided in the present invention is such that programming messages are not needed to unsubscribe to a given message service. For example, if a user wants to subscribe to receive weather information from a given service provider "B" for one month, a single programming message is sent which programs the user's mobile device with an expiration date such that "content" messages from service provider "B" are received for the one month period. After the occurrence of the expiration date, in this example one month, "content" messages

from service provide "B" are discarded. In contrast, the method of Parkinson would require two programming messages to be sent, the first to subscribe to the service, the second to unsubscribe.

In conclusion, Applicant respectfully submits that the "timer" taught in Parkinson is directed to a time period during which "programming" messages are recognized and received. This is in contrast to the expiration date utilized in the present invention that is indicative of a time period during which "content" messages are received by a mobile device pursuant to a subscription. The two systems are simply fundamentally different.

In view of the foregoing, Applicant respectfully submits that independent claims 20 and 31 are allowable. Reconsideration and allowance of independent claims 20 and 31 are respectfully requested.

Dependent claims 21-28 and 32-36 depend either directly or ultimately from the independent claims. Therefore, Applicant submits that those claims are allowable as well. Reconsideration and allowance of claims 20-28 and 31-36 are respectfully requested. Applicant also gratefully acknowledges the Examiner's continued indication that claims 23 and 28 contain allowable subject matter.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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